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Message Text

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ORIGIN XMB-04

INFO OCT-01 EA-07 ISO-00 EB-07 COME-00 OPIC-03 TRSE-00
L-03 CIAE-00 INR-07 NSAE-00 /032 R

EXIMBANK

DRAFTED BY XMB:JH GAINER:SMB
APPROVED BY EB/ODF FHTHOMAS
XMB: WC SAUER
XMB: D E GIANTURCO
EA/TB: L L ROCKE
----------161955Z 096781 /73
P 161741Z JUN 77
FM SECSTATE WASHDC
TO AMEMBASSY BANGKOK PRIORITY

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E.O. 11652:

TAGS: EFIN, TH

SUBJECT:EXIMBANK CREDIT NOS. 2336 AND 6212 SIAM KRAFT
PAPER CO., LTD. (SKPC) CUSTOMS LITIGATION.

1. EXIMBANK AND OPIC INFORMED BY SKPC IT HAS REASON TO
BELIEVE PULP CASE CHARGING CRIMINAL EVASION OF CUSTOMS
DUTIES HAS BEEN LOST ON APPEAL TO DIKA (SUPREME COURT).
DECISION OF COURT WAS SCHEDULED TO BE READ JUNE 8, BUT HAS
BEEN REASSIGNED FOR READING ON JULY 11. PENALTIES OF
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APPROXIMATELY DOLLARS 3.25 MILLION, WHICH INCLUDE REWARDS
FOR TWENTY PERCENT THAT AMOUNT PAYABLE TO INFORMANTS, WOULD
BE ASSESSED.

2. THIS CASE AROSE OUT OF SHIPMENTS MADE IN 1970. AT LEAST
TWICE BEFORE, ONCE BY ADJUDICATION OF THAI BOARD OF
INVESTMENT (BOI) AND AGAIN BY CRIMINAL COURT, SKPC HAD BEEN
EXONERATED EXCEPT FOR NOMINAL PENALTIES FROM ALL CHARGES.
FIRST ADVERSE DECISION WAS THAT OF COURT OF APPEALS ON

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OCTOBER 29, 1976, FROM WHICH AN APPEAL TO SUPREME COURT WAS TAKEN.

3. PRIOR TO COURT OF APPEALS DECISION, EXIMBANK AND OPIC,

WITH OTHER MAJOR LENDERS, ENGAGED IN MAJOR RESCHEDULINGS AND REORGANIZATIONS OF SKPC'S DEBT AND EXTENSIONS OF NEW LOANS TO SAVE SKPC FROM BANKRUPTCY. AS A RESULT, SKPC IS NOW SHOWING PROFIT, BUT ONLY BY FOREBEARANCE OF MAJOR CREDITORS.

4. HITHERETO EXIMBANK AND OPIC HAVE REFRAINED FROM APPEALING TO THE GOVERNMENT OF THAILAND (GOKT) BECAUSE OF FAVORABLE BOI AND CRIMINAL COURT DECISIONS AND OPINION OF SKPC THAT PROCEEDINGS WOULD BE SUCCESSFULLY CONCLUDED ON APPEAL.

5. IF DECISION OF SUPREME COURT DOES GO AGAINST SKPC, AS NOW ANTICIPATED BY SKPC, PENALTIES INVOLVED WOULD BE BEYOND CAPACITY OF SKPC TO PAY IN LUMP SUM WITHOUT PRE-CIPITATING BANKRUPTCY.

6. ON ASSUMPTION THAT SUPREME COURT DECISION WILL BE ADVERSE OPIC AND EXIMBANK HAVE MADE THIS BRIEF REVIEW OF CASE AS BACKGROUND TO REQUESTING EMB TO MAKE REPRESENTA-TIONS AT APPROPRIATE LEVELS OF GOKT TO AVOID ACTION THAT WOULD CAUSE BANKRUPTCY OF SKPC, PARTICULARLY IN FACE OF LIMITED OFFICIAL USE

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PROLONGED AND CONSIDERABLE EFFORTS OF EXIMBANK AND OPIC TO SAVE SKPC FROM BANKRUPTCY.

7. EXIMBANK AND OPIC REQUEST EMB TO URGE SETTLEMENT OF THIS CASE BY SUBSTANTIAL REDUCTION OF AMOUNT OF CLAIM AND DEFERRAL OF PAYMENT COMPARABLE TO REDUCTIONS AND DEFERRALS GRANTED BY EXIMBANK AND OTHER LENDERS. IT IS ESSENTIAL THAT SUCH DISCUSSIONS BE INITIATED IMMEDIATELY. A POINT RELEVANT TO SUCH A SETTLEMENT IS STANDING OF CLAIM OF GOKT IN BANKRUPTCY. WE ARE INFORMED THAT CLAIM HAS NO PRIORITY AND WOULD PROBABLY STAND BEHIND NEW LOANS WHICH ARE SECURED BY A MORTGAGE.

8. OPIC AND EXIMBANK ARE FULLY AWARE OF DELICATE PROBLEM PRESENTED BY THIS BEING A CRIMINAL CASE SUB-JUDICE, BUT IN BELIEF OUT-OF-COURT SETTLEMENT MAY STILL BE POSSIBLE, WISH TO MAKE A DISTINCTION BETWEEN SUGGESTION FOR REPRESENTA-TIONS BEING MADE TO GOKT, AS PROSECUTOR OF CASE, RATHER THAN ANY ATTEMPT TO INTERFERE WITH OR ADDRESS THE JUDICIAL TRIBUNAL WHICH IS ENTERTAINING THE APPEAL.

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9. IF SETTLEMENT THROUGH SUBSTANTIAL REDUCTION OF CLAIM APPEARS IMPOSSIBLE, GOKT SHOULD BE ASKED TO DEFER PAYMENT OF PENALTIES OVER AS LONG A PERIOD OF TIME AS GENERAL DEBT OF SKPC UNDER REORGANIZATION WITHOUT REQUIRING SKPC TO FURNISH A GUARANTEE OF PAYMENT BY A BANK OR OTHER INSTITUTION.

10. ASPECTS OF THE CASE HAVE BEEN DISCUSSED IN WASHINGTON WITH TARRIN NIMMANAHAEMINDA, AND SKPC IS PREPARED TO MAKE SEPARATE REPRESENTATIONS TO GOKT, PARALLELING THOSE OF EXIMBANK, OPIC, AND EMB. WE SUGGEST EMB DISCUSS MATTER WITH AMARATE SILA-ON, MANAGER OF SKPC, FOR COMPLETE BACKGROUND OF PENDING APPEAL. IF EMB WISHES, HARVEY LEVE MAY ALSO BE BROUGHT INTO DISCUSSIONS.

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11. HAVE AVOIDED DEALING WITH MERITS OF CASE BEYOND GENERAL COMMENTS MADE ABOVE BECAUSE OF WEALTH OF DETAILS SURROUNDING ISSUES AND OUR UNDERSTANDING THAT POLITICAL AND OTHER FACTORS EXTRANEOUS TO ISSUES MAY BE INVOLVED. GAINER/WOLFE WISH TELEPHONE TOOMEY ECON/CML OFF MONDAY, JUNE 20 AT HIS HOME AT 2000 HOURS BANGKOK, THAILAND TIME. IF NOT CONVENIENT, PLEASE SUGGEST ALTERNATE TIME. CHRISTOPHER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
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Sent Date: 16-Jun-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE139883
Document Source: CORE
Document Unique ID: 00
Drafter: JH GAINER:SMB
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770215-0670
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
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Legacy Key: link1977/newtext/t19770649/aaaabqth.tel
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Litigation Code IDs:
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Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: b3bd7c7b-c288-dd11-92da-001cc4696bcc
Office: ORIGIN XMB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
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Review Date: 25-Jan-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2122367
Secure: OPEN
Status: NATIVE
Subject: EXIMBANK CREDIT NOS. 2336 AND 6212 SIAM KRAFT PAPER CO., LTD. (SKPC) CUSTOMS LITIGATION.
TAGS: EFIN, TH, OPIC, XMB, SKPC, SIAM CRAFT PAPER CO LTD
To: BANGKOK
Type: TE
vdkvgwkey: odbc://SAS/SAS.dbo.SAS_Docs/b3bd7c7b-c288-dd11-92da-001cc4696bcc
Review Markings:
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US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009